

§ 301.6721-1

26 CFR Ch. I (4-1-11 Edition)

(h) Transitional rules for information returns required to be filed (or payee statements required to be furnished) after December 31, 1989 (without regard to extensions), and on or before April 22, 1991.

(1) In general.

(2) Special rule on TINs.

(i) [Reserved]

(j) Failures to which this section relates.

(k) Examples.

(l) [Reserved]

(m) Procedure for seeking a waiver.

(n) Manner of payment.

[T.D. 8386, 56 FR 67182, Dec. 30, 1991, as amended by T.D. 8734, 62 FR 53496, Oct. 14, 1997]

§ 301.6721-1 Failure to file correct information returns.

(a) *Imposition of penalty*—(1) *General rule.* A penalty of \$50 is imposed for each information return (as defined in section 6724(d)(1) and paragraph (g) of this section) with respect to which a failure (as defined in section 6721(a)(2) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a)(1) with respect to a single information return even though there may be more than one failure with respect to such return. The total amount imposed on any person for all failures during any calendar year with respect to all information returns shall not exceed \$250,000. See paragraph (b) of this section for a reduction in the penalty when the failures are corrected within specified periods. See paragraph (c) of this section for an exception to the penalty for inconsequential errors or omissions. See paragraph (d) of this section for an exception to the penalty for a *de minimis* number of failures. See paragraph (e) of this section for lower limitations to the \$250,000 maximum penalty. See paragraph (f) of this section for higher penalties when a failure is due to intentional disregard of the requirement to file timely correct information returns. See paragraph (a)(1) of § 301.6724-1 for waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which section 6721(a) and paragraph (a)(1) of this section apply are—

(i) A failure to file an information return on or before the required filing date (“failure to file timely”), and

(ii) A failure to include all of the information required to be shown on the return or the inclusion of incorrect information (“failure to include correct information”). A failure to file timely includes a failure to file in the required manner, for example, on magnetic media or in other machine-readable form as provided under section 6011(e). However, no penalty is imposed under paragraph (a)(1) of this section solely by reason of any failure to comply with the requirements of section 6011(e)(2), except to the extent that such a failure occurs with respect to more than 250 information returns (the 250-threshold requirement) or in the case of a partnership with more than 100 partners, more than 100 information returns (the 100-threshold requirement) (collectively, the threshold requirements). Each Schedule K-1 considered in applying the 100-threshold requirement will be treated as a separate information return. These threshold requirements apply separately to each type of information return required to be filed. Further, these threshold requirements apply separately to original and corrected returns. Thus, for example, if a filer files 300 returns on Form 1099-DIV and later files 70 corrected returns on Form 1099-DIV, the corrected returns may be filed either on the prescribed paper form (because they fall below the 250-threshold requirement) or on magnetic media or other machine-readable form. Filers who are required to file information returns on magnetic media and who file such information returns electronically are considered to have satisfied the magnetic media filing requirement. Except as provided in paragraph (c)(1) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue rulings, revenue procedures, or information reporting forms and form instructions). A failure to include information in the correct format may be either a failure to file timely an information return or a failure to include correct information on an information return. For example, an error on a

magnetic media submission to the Internal Revenue Service that prevents processing by the Internal Revenue Service may constitute a failure to file timely. However, if information is set forth on the wrong field of the magnetic media submission, such an error may constitute a failure to file timely or a failure to include correct information, depending upon the extent of the failure.

(b) *Reduction in the penalty when a correction is made within specified periods*—(1) *Correction within 30 days.* The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include correct information shall be \$15 in lieu of \$50 if the failure is corrected on or before the 30th day after the required filing date (“within 30 days”). The total amount imposed on a person for all failures during any calendar year that are corrected within 30 days shall not exceed \$75,000.

(2) *Correction after 30 days but on or before August 1.* The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include correct information shall be \$30 in lieu of \$50 if the failure is corrected after the 30-day period described in paragraph (b)(1) of this section but on or before August 1 of the year in which the required filing date occurs (“after 30 days but on or before August 1”). (See paragraph (b)(6) of this section for an exception to the provisions of this paragraph (b)(2) for returns that are not due on February 28 or March 15.) The total amount imposed on a person for all failures during any calendar year corrected after 30 days but on or before August 1 shall not exceed \$150,000.

(3) *Required filing date defined.* The term “required filing date” means the date prescribed for filing an information return with the Internal Revenue Service (or the Social Security Administration in the case of Forms W-2) determined with regard to any extension of time for filing.

(4) *Penalty amount for return with multiple failures.* If a return is subject to a penalty for more than one failure, and the penalty amounts for the failures differ, the higher penalty amount will be imposed.

(5) *Examples.* The provisions of paragraphs (a) and (b) (1) through (4) of this section may be illustrated by the following examples. These examples do not take into account any possible application of the *de minimis* exception under paragraph (d) of this section, the lower small business limitations under paragraph (e) of this section, the penalty for intentional disregard under paragraph (f) of this section, or the reasonable cause waiver under paragraph (a) of § 301.6724-1:

Example 1. Corporation R fails to file timely 11,000 Forms 1099-MISC (relating to miscellaneous income) for the 1990 calendar year. Five thousand of these returns are filed with correct information within 30 days, and 6,000 after 30 days but on or before August 1, 1991. For the same year R fails to file timely 400 Forms 1099-INT (relating to payments of interest) which R eventually files on September 28, 1991, after the period for reduction of the penalty has elapsed. R is subject to a penalty of \$20,000 for the 400 forms which were not filed by August 1 ($\$50 \times 400 = \$20,000$), \$150,000 for the 6,000 forms filed after 30 days ($\$30 \times 6,000 = \$180,000$, limited to \$150,000 under paragraph (b)(2) of this section), and \$75,000 for the 5,000 forms filed within 30 days ($\$15 \times 5,000 = \$75,000$), for a total penalty of \$245,000.

Example 2. Corporation T fails to file timely 6,000 Forms 1099-MISC for the 1990 calendar year. T files the 6000 Forms 1099-MISC on September 1, 1991. Because T does not correct the failure by August 1, 1991, T is subject to a penalty of \$250,000, the maximum penalty under paragraph (a) of this section. Without the limitation of paragraph (a), T would be subject to a \$300,000 penalty ($\$50 \times 6,000 = \$300,000$).

Example 3. Corporation U files timely 300 Forms 1099-MISC on paper for the 1990 calendar year with correct information. Under section 6011(e)(2) a person required to file at least 250 returns during a calendar year must file those returns on magnetic media. U does not correct its failures to file these returns on magnetic media by August 1, 1991. It is therefore subject to a penalty for a failure to file timely under paragraph (a)(2) of this section. However, pursuant to section 6724(c) and paragraph (a)(2) of this section, the penalty for a failure to file timely on magnetic media applies only to the extent the number of returns exceeds 250. As U was required to file 300 returns on magnetic media, U is subject to a penalty of \$2,500 for 50 returns ($\$50 \times 50 = \$2,500$).

Example 4. Corporation V files 300 Forms 1099-MISC on paper for the 1990 calendar year. The forms were filed on March 15, 1991, rather than on the required filing date of February 28, 1991. Under section 6011(e)(2), a

person required to file at least 250 returns during a calendar year must file those returns on magnetic media. V does not correctly file these returns on magnetic media by August 1, 1991. V is subject to a penalty of \$3,750 for filing 250 of the returns late ($\$15 \times 250$) and \$2,500 for failing to file 50 returns on magnetic media ($\$50 \times 50$) for a total penalty of \$6,250.

(6) *Application to returns not due on February 28, or March 15.* For returns that are not due on February 28 or March 15 (for example, Forms 8300 reporting certain cash payments of \$10,000 or more), the penalty is \$15 if the failure is corrected within 30 days. If the failure is corrected after 30 days, the penalty is \$50 rather than \$30. There is no period during which the penalty is reduced to \$30 under paragraph (b)(2) of this section.

(c) *Exception for inconsequential errors or omissions—(1) In general.* An inconsequential error or omission is not considered a failure to include correct information. For purposes of this paragraph (c)(1), the term “inconsequential error or omission” means any failure that does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee’s tax return, or from otherwise putting the return to its intended use. See paragraph (g)(5) of this section for the definition of “payee.”

(2) *Errors or omissions that are never inconsequential.* Errors or omissions relating to the following are never inconsequential—

- (i) A taxpayer identification number;
- (ii) A surname of a payee (*i.e.*, the person required to be furnished a copy of the information set forth on an information return); and
- (iii) Any monetary amounts. The Internal Revenue Service may, by administrative pronouncement, specify other types of errors or omissions that are never inconsequential.

(3) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples, which do not take into account any possible application of the penalty for intentional disregard under paragraph (f) of this section or the reasonable cause waiver under paragraph (a) of § 301.6724-1:

Example 1. A filer files a Form 1099-MISC (relating to miscellaneous income) with the Internal Revenue Service. The Form 1099-MISC is complete and correct except that the word “street” is misspelled in the payee’s address. The error does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee’s tax return, or from otherwise putting the return to its intended use. Therefore, no penalty is imposed under paragraph (a) of this section.

Example 2. A filer files a Form 1099-MISC with the Internal Revenue Service. The Form 1099-MISC is complete and correct except that the payee’s first name, William, is misspelled as “Willaim.” the error does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee’s tax return, or from otherwise putting the return to its intended use. See paragraph (c)(2) of this section. Therefore, no penalty is imposed under paragraph (a) of this section.

Example 3. A filer files a Form 1099-MISC with the Internal Revenue Service. The Form 1099-MISC is complete and correct except that the payee’s name, “John Doe,” is misspelled as “John Ode.” Under paragraph (c)(2) of this section, supplying an incorrect surname for a payee is never considered an inconsequential error. Therefore, a penalty is imposed under paragraph (a) of this section.

(d) *Exception for a de minimis number of failures—(1) Requirements.* The penalty under paragraph (a) of this section is not imposed for a *de minimis* number of failures to include correct information if the filer corrects such failures on or before August 1 of the year in which the required filing date occurs. (See paragraph (d)(4) of this section for special rules relating to returns that are not due on February 28 or March 15.)

(2) *Calculation of the de minimis exception.* The number of returns to which the *de minimis* exception applies for any calendar year shall not exceed the greater of 10 or one-half of one percent of the total number of all information returns the filer is required to file during the year. If the number of returns on which the filer fails to include correct information exceeds the number of returns to which the *de minimis* exception applies, the *de minimis* exception applies to those returns that will afford

the filer the greatest reduction in penalty. The *de minimis* exception applies to failures to include correct information that exist after the application (if any) of the waiver for reasonable cause under section 6724(a) and § 301.6724-1. Returns to which the *de minimis* exception applies are treated as having been originally filed with correct information.

(3) *Examples.* The provisions of this paragraph (d) may be illustrated by the following examples. In each of the examples, the failures to file and to include correct information are subject to penalty under paragraph (a) of this section. The examples do not take into account any possible application of paragraph (f) of this section or the reasonable cause waiver under paragraph (a) of § 301.6724-1 of this section.

Example 1. Corporation T files timely 10,000 Forms 1099-INT (relating to payments of interest) for 1990 by February 28, 1991. The 10,000 returns are all the information returns that T is required to file during the 1991 calendar year. Of the returns filed, 70 contained incorrect information. T corrects the failures on July 12, 1991. No penalty is imposed for 50 of the failures (*i.e.*, the greater of 10 or $.005 \times 10,000 = 50$) even though the total failures, 70, exceed the number to which the *de minimis* exception may apply. The \$30 penalty under paragraph (b)(2) of this section is imposed, in lieu of \$50, for the remaining 20 failures, which were corrected after 30 days but on or before August 1, resulting in a total penalty of \$600 ($\$30 \times 20 = \600).

Example 2. Corporation U files timely 9,500 Forms 1099-INT for 1990 by February 28, 1991, the required filing date. Fifty of these returns contain incorrect information with respect to which U files correct information on August 1, 1991. U also files 500 Forms 1099-INT for 1990 on August 30, 1991, after the required filing date. The 10,000 returns are all the information returns that U is required to file during the 1991 calendar year. The calculation of the *de minimis* exception is based on the 10,000 returns required to be filed during the 1991 calendar year even though 500 of the returns filed during the year were not filed timely. Therefore, the number of failures for which the *de minimis* exception applies is 50, and accordingly no penalty is imposed for the 50 Forms 1099-INT that were corrected on August 1, 1991. However, the \$50 penalty under paragraph (a)(1) of this section is imposed for each failure to file timely, resulting in a total penalty of \$25,000 ($\$50 \times 500 = \$25,000$).

Example 3. Corporation V files timely 9,950 Forms 1099-INT for 1990 by February 28, 1991.

However, V fails to file timely 50 of its Forms 1099-INT. The 10,000 returns are all the information returns that V is required to file during the 1991 calendar year. Upon discovering the error, V files the 50 returns within 30 days of February 28, 1991. The 50 returns are complete and correct except that V fails to include the taxpayer identification numbers of the payees on the returns. V files corrected returns on August 1, 1991. Absent application of the *de minimis* exception, the penalty imposed for the failure to include correct information would be \$1,500 ($\$30 \times 50 = \$1,500$). Because the incorrect returns are corrected on August 1, the 50 forms are treated under the *de minimis* exception as originally filed with correct information, and therefore no penalty is imposed under paragraph (a) of this section for the failure to include correct information. Nevertheless, the penalty under paragraph (a) of this section is imposed for the failure to file timely the 50 returns because the *de minimis* exception does not apply to the penalty for the failure to file timely. Hence, a penalty of \$750 ($\$15 \times 50 = \750) is imposed.

Example 4. Corporation W files timely 100 Forms 1099-DIV and files an additional 50 Forms 1099-DIV late, but within 30 days of February 28, 1991. These are all the information returns that W was required to file during the 1991 calendar year. W discovers errors on 10 of the returns that were filed timely, and on 5 of the returns that were filed late. W corrects all the errors on August 1. The *de minimis* exception applies to 10 of the corrected returns. The exception will be allocated to the 10 returns that were filed timely with incorrect information, because that allocation is most favorable to W (*i.e.*, applying the exception to a return filed late with incorrect information would save W \$15, by reducing the penalty on that return from \$30 to \$15, but applying the exception to a return filed timely would save W \$30, by reducing the penalty on that return from \$30 to \$0). (See paragraph (b)(4) of this section.)

(4) *Nonapplication to returns not due on February 28 or March 15.* The exception for a *de minimis* number of failures provided in paragraph (d)(1) of this section does not apply to failures with respect to returns that are not due on February 28 or March 15 (for example, Forms 8300 reporting certain cash payments of \$10,000 or more). Nevertheless, the returns that are not due on February 28 or March 15 are included in the total number of all information returns that the filer is required to file during a year for purposes of calculating the number of the returns subject to the *de minimis* exception under paragraph (d)(2) of this section.

(e) *Lower limitations on the \$250,000 maximum penalty amount with respect to persons with gross receipts of not more than \$5,000,000*—(1) *In general.* If a person meets the gross receipts test (as defined in paragraph (e)(2) of this section) for any calendar year, the total amount of the penalty imposed on such person for all failures described in section 6721(a)(2) and paragraph (a)(2) of this section during such calendar year shall not exceed \$100,000. The total amount of the penalty imposed under paragraph (b)(1) of this section for failures corrected within 30 days shall not exceed \$25,000 for such calendar year. The total amount of the penalty imposed under paragraph (b)(2) of this section for failures corrected after 30 days but on or before August 1 shall not exceed \$50,000 for such calendar year.

(2) *Gross receipts test.* A person meets the gross receipts test for any calendar year if the average annual gross receipts for such person for the three most recent taxable years ending before such calendar year do not exceed \$5,000,000. For purposes of determining the amount of gross receipts during the three most recent taxable years, the rules of section 448(c) (2) and (3) shall apply.

(f) *Higher penalty for intentional disregard of requirement to file timely correct information returns*—(1) *Application of section 6721(e).* If a failure is due to intentional disregard of the requirement to file timely or to include correct information on a return as described in paragraph (g) of this section, the amount of the penalty imposed under paragraph (a) of this section shall be determined under paragraph (f)(4) of this section.

(2) *Meaning of “intentional disregard.”* A failure is due to intentional disregard if it is a knowing or willful—

- (i) Failure to file timely, or
- (ii) Failure to include correct information. Whether a person knowingly or willfully fails to file timely or fails to include correct information is determined on the basis of all the facts and circumstances in the particular case.

(3) *Facts and circumstances considered.* The facts and circumstances that are considered in determining whether a

failure is due to intentional disregard include, but are not limited to—

- (i) Whether the failure to file timely or the failure to include correct information is part of a pattern of conduct by the person who filed the return of repeatedly failing to file timely or repeatedly failing to include correct information;
- (ii) Whether correction was promptly made upon discovery of the failure;
- (iii) Whether the filer corrects a failure to file or a failure to include correct information within 30 days after the date of any written request from the Internal Revenue Service to file or to correct; and
- (iv) Whether the amount of the information reporting penalties is less than the cost of complying with the requirement to file timely or to include correct information on an information return.

(4) *Amount of the penalty.* If one or more failures to file timely or to include correct information are due to intentional disregard of the requirement to file timely or to include correct information, then, with respect to each such failure determined under this paragraph (f)—

- (i) Paragraphs (b), (d), and (e) of this section shall not apply;
- (ii) The \$250,000 limitation under paragraph (a) of this section shall not apply, and the penalty under this paragraph (f) shall not be taken into account in applying the \$250,000 limitation (or any similar limitation under paragraph (b) or (e) of this section) to penalties not determined under this paragraph (f);
- (iii) The penalty imposed under paragraph (a) of this section shall be \$100 or, if greater, the statutory percentage; and
- (iv) The term “statutory percentage” means—

(A) In the case of a return other than a return required under section 6045(a), 6041A(b), 6050H, 6050I (for amounts received after November 5, 1990), 6050J, 6050K, or 6050L, 10 percent of the aggregate dollar amount of the items required to be reported correctly,

(B) In the case of a return required to be filed by section 6045(a), 6050K, or 6050L, 5 percent of the aggregate dollar

amount of the items required to be reported correctly, or

(C) In the case of a return required to be filed under section 6050I(a) with respect to amounts received after November 5, 1990, for any transaction (or related transactions), the greater of \$25,000 or the amount of cash (within the meaning of section 6050I(d)) received in such transaction to the extent the amount of such cash does not exceed \$100,000.

(5) *Computation of the penalty; aggregate dollar amount of the items required to be reported correctly.* The aggregate dollar amount used in computing the penalty under this paragraph (f) is the amount that is not reported or is reported incorrectly. If the intentional disregard relates to a dollar amount, the statutory percentage is applied to the difference between the dollar amount reported and the amount required to be reported correctly. If the intentional disregard relates to any other item on the return, the statutory percentage is applied to the aggregate amount of items required to be reported correctly. In determining the aggregate amount of items required to be reported correctly, no item shall be taken into account more than once. For example, if a filer willfully fails to file a Form 1099-INT on which \$800 of interest and \$160 of Federal income tax withheld (*i.e.*, backup withholding) is required to be reported, only the \$800 amount is taken into account in computing the penalty.

(6) *Examples.* The provisions of this paragraph (f) may be illustrated by the following examples:

Example 1. On December 1, 1990, Automobile dealer P receives \$55,000 from an individual for the purchase of an automobile in a transaction subject to reporting under section 6050I. The individual presents documents to P that identify him as "John Doe." However, P completes the Form 8300 (relating to cash received in a trade or business) and reflects the name of a cartoon character as the payor. Because P knew at the time of filing the Form 8300 that the payor's name was not the name of the cartoon character, he willfully failed to include correct information as described under paragraph (f)(2) of this section. Therefore, the penalty under paragraph (f)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under para-

graph (f)(5) of this section is \$55,000 (*i.e.*, the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (f)(4)(ii)(C) of this section is \$55,000 (*i.e.*, the greater of \$25,000 or the amount of cash received in the transaction up to \$100,000).

Example 2. On December 1, 1990, Individual B contacts his agent, F, to act as his intermediary in the purchase of an automobile. B gives F \$20,000 and requests F to purchase the automobile in F's name, which F does. F prepares the Form 8300 as required under section 6050I, but in the area designated for the name of the payor, F writes "confidential." Because F knew at the time the return was filed that it contained incomplete information, the penalty under paragraph (f)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under paragraph (f)(5) of this section is \$20,000 (*i.e.*, the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (f)(4)(ii)(C) of this section is \$25,000 (*i.e.*, the greater of \$25,000 or the amount of cash received in the transaction up to \$100,000).

Example 3. Corporation M deliberately does not include \$5,000 of dividends on a Form 1099-DIV (relating to payments of dividends) on which a total of \$200,000 (including the \$5,000 dividends) is required to be reported under section 6042(a). Because the failure was deliberate, Corporation M's failure is due to intentional disregard of the requirement to include correct information. Accordingly, the amount of the penalty imposed under paragraph (a) is determined under paragraph (f)(4) of this section. Because the Form 1099-DIV is required to be filed under section 6042(a), under paragraph (f)(4)(ii)(A) the amount of the penalty with respect to such failure is 10 percent of the aggregate dollar amount of the items that were required to be but that were not reported correctly. Under paragraph (f)(5) of this section, \$5,000 is the difference between the dollar amount reported and the amount required to be reported correctly. Therefore, the amount of the penalty is \$500 ($\$5,000 \times .10 = \500).

Example 4. Form 8027 requires certain large food and beverage establishments to report certain information with respect to tips. The form requires (among other things) that the establishment report its gross receipts from food and beverage operations. Establishment A, in intentional disregard of the information reporting requirement, reported gross receipts of \$1,000,000, when the correct amount was \$1,500,000. The significance of the gross receipts reporting requirement is

that section 6053(c)(3)(A) requires an establishment to allocate as tips among its employees the excess of 8 percent of its gross receipts over the aggregate amount reported by employees to the establishment as tips under section 6053(a). A's misstatement of its gross receipts caused A to show \$80,000 on the Form 8027 as 8 percent of its gross receipts, rather than the correct amount of \$120,000. A correctly reported the amount of tips reported to it by employees under section 6053(a) as \$80,000. Thus A reported the excess of 8 percent of its gross receipts over tips reported to it as zero, rather than as the correct amount of \$40,000. The requirement of reporting gross receipts is considered merely a step in the computation of the excess of 8 percent of gross receipts over tips reported to A under section 6053(a), so that the penalty for intentional disregard will be \$4,000 (*i.e.*, 10 percent of the difference between the \$40,000 required to be reported as the excess of 8 percent of gross receipts over tips reported under section 6053(a), and the zero amount actually reported).

(g) *Definitions*—(1) *Information return*. For purposes of this section the term “information return” means any statement described in paragraph (g)(2) of this section, any return described in paragraph (g)(3) of this section, and any other items described in paragraph (g)(4) of this section.

(2) *Statements*. The statements subject to this section are the statements required by—

(i) Section 6041(a) or (b) (relating to certain information at source, generally reported on Form 1099-MISC, “Miscellaneous Income”; Form W-2, “Wage and Tax Statement”; Form W-2G, “Certain Gambling Winnings”; and Form 1099-INT, “Interest Income”);

(ii) Section 6042(a)(1) (relating to payments of dividends, generally reported on Form 1099-DIV, “Dividends and Distributions”);

(iii) Section 6044(a)(1) (relating to payments of patronage dividends, generally reported on Form 1099-PATR, “Taxable Distributions Received From Cooperatives”);

(iv) Section 6049(a) (relating to payments of interest, generally reported on Form 1099-INT or Form 1099-OID, “Original Issue Discount”);

(v) Section 6050A(a) (relating to reporting requirements of certain fishing boat operators, generally reported on Form 1099-MISC);

(vi) Section 6050N(a) (relating to payments of royalties, generally reported on Form 1099-MISC);

(vii) Section 6051(d) (relating to information returns with respect to income tax withheld, generally reported on Form W-2);

(viii) Section 6050R (relating to returns relating to certain purchases of fish, generally reported on Form 1099-MISC);

(ix) Section 110(d) (relating to qualified lessee construction allowances for short-term leases, generally reported by attaching a statement to an income tax return);

(x) Section 408(i) (relating to reports with respect to individual retirement accounts or annuities on Form 1099-R, “Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.”); or

(xi) Section 6047(d) (relating to reports by employers, plan administrators, etc., on Form 1099-R).

(3) *Returns*. The returns subject to this section are the returns required by—

(i) Section 6041A(a) or (b) (relating to returns of direct sellers, generally reported on Form 1099-MISC);

(ii) Section 6043A(a) (relating to returns relating to taxable mergers and acquisitions);

(iii) Section 6045(a) or (d) (relating to returns of brokers, generally reported on Form 1099-B, “Proceeds From Broker and Barter Exchange Transactions,” for broker transactions; Form 1099-S, “Proceeds From Real Estate Transactions,” for gross proceeds from the sale or exchange of real estate; and Form 1099-MISC for certain substitute payments and payments to attorneys);

(iv) Section 6045B(a) (relating to returns relating to actions affecting basis of specified securities);

(v) Section 6050H(a) or (h)(1) (relating to mortgage interest received in trade or business from individuals, generally reported on Form 1098, “Mortgage Interest Statement”);

(vi) Section 6050I(a) or (g)(1) (relating to cash received in trade or business, etc., generally reported on Form 8300, “Report of Cash Payments Over \$10,000 Received In a Trade or Business”);

(vii) Section 6050J(a) (relating to foreclosures and abandonments of security, generally reported on Form 1099-A, "Acquisition or Abandonment of Secured Property");

(viii) Section 6050K(a) (relating to exchanges of certain partnership interests, generally reported on Form 8308, "Report of a Sale or Exchange of Certain Partnership Interests");

(ix) Section 6050L(a) (relating to returns relating to certain dispositions of donated property, generally reported on Form 8282, "Donee Information Return");

(x) Section 6050P (relating to returns relating to the cancellation of indebtedness by certain financial entities, generally reported on Form 1099-C, "Cancellation of Debt");

(xi) Section 6050Q (relating to certain long-term care benefits, generally reported on Form 1099-LTC, "Long-Term Care and Accelerated Death Benefits");

(xii) Section 6050S (relating to returns relating to payments for qualified tuition and related expenses, generally reported on Form 1098-E, "Student Loan Interest Statement," or Form 1098-T, "Tuition Statement");

(xiii) Section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals, generally reported on Form 1099-H, "Health Coverage Tax Credit (HCTC) Advance Payments");

(xiv) Section 6052(a) (relating to reporting payment of wages in the form of group-life insurance, generally reported on Form W-2);

(xv) Section 6050V (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests, generally reported on Form 8921, "Applicable Insurance Contract Information Return");

(xvi) Section 6053(c)(1) (relating to reporting with respect to certain tips, generally reported on Form 8027, "Employer's Annual Information Return of Tip Income and Allocated Tips");

(xvii) Section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions, generally reported on Form 8594, "Asset Acquisition Statement"), or section 1060(e) (relating to information required in the case of certain

transfers of interests in entities (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition));

(xviii) Section 4101(d) (relating to information reporting with respect to fuel oils (effective for information returns required to be filed after November 30, 1990));

(xix) Section 338(h)(10)(C) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition));

(xx) Section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts);

(xxi) Section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements, generally reported on Form 1099-R);

(xxii) Section 6039(a) (relating to returns required with respect to certain options); or

(xxiii) Section 6050W (relating to information returns with respect to payments made in settlement of payment card and third party network transactions).

(4) *Other items.* The term *information return* also includes any form, statement, or schedule required to be filed with the Internal Revenue Service with respect to any amount from which tax is required to be deducted and withheld under chapter 3 of the Internal Revenue Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Internal Revenue Code or any treaty obligation of the United States), generally Forms 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding," and 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax." The provisions of this paragraph (g)(4) referring to Form 8805, shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446-1 through 1.1446-5 of this

chapter apply by reason of an election under § 1.1446-7 of this chapter.

(5) *Payee*. For purposes of section 6721 the term “payee” means any person who is required to receive a copy of the information set forth on an information return by the filer of the return as defined in section 6724(d)(1).

(6) *Filer*. For purposes of this section the term “filer” means a person that is required to file an information return as defined in paragraph (g)(1) of this section under the applicable information reporting section described in paragraph (g) (2) through (4) of this section.

[T.D. 8386, 56 FR 67182, Dec. 30, 1991, as amended by T.D. 8843, 64 FR 61504, Nov. 12, 1999; T.D. 9200, 70 FR 28742, May 18, 2005; T.D. 9496, 75 FR 49836, Aug. 16, 2010; T.D. 9504, 75 FR 64103, Oct. 18, 2010]

§ 301.6722-1 Failure to furnish correct payee statements.

(a) *Imposition of penalty*—(1) *General rule*. A penalty of \$50 is imposed for each payee statement (as defined in section 6724(d)(2)) with respect to which a failure (as defined in section 6722(a) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a) with respect to a single payee statement even though there may be more than one failure with respect to such statement. However, the penalty shall apply to failures on composite substitute payee statements as though each type of payment and other required information were furnished on separate statements. A “composite substitute payee statement” is a single document created by a filer to reflect several types of payments made to the same payee. The total amount imposed on any person for all failures during any calendar year with respect to all payee statements shall not exceed \$100,000. See section 6722(c) and paragraph (c) of this section for higher penalties when a failure is due to intentional disregard of the requirement to furnish timely correct payee statements. See paragraph (a)(1) of § 301.6724-1 for a waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty*. The failures to which section 6722(a) and

paragraph (a)(1) of this section apply are—

(i) A failure to furnish a payee statement on or before the prescribed date therefore to the person to whom such statement is required to be furnished (“failure to furnish timely”), and

(ii) A failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information (“failure to include correct information”). A failure to furnish timely includes a failure to furnish a written statement to the payee in a statement mailing as required under sections 6042(c), 6044(e), 6049(c), and 6050N(b), as well as a failure to furnish the statement on a form acceptable to the Internal Revenue Service. Except as provided in paragraph (b) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue rulings, revenue procedures, or information reporting forms).

(b) *Exception for inconsequential errors or omissions*—(1) *In general*. An inconsequential error or omission is not considered a failure to include correct information. For purposes of this paragraph (b), the term “inconsequential error or omission” means any failure that cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her return or from otherwise putting the statement to its intended use.

(2) *Errors or omissions that are never inconsequential*. Errors or omissions relating to the following are never inconsequential:

(i) A dollar amount,

(ii) The significant items in the address of a payee, which is the address provided by the payee to the filer,

(iii) The appropriate form for the information provided (*i.e.*, whether or not the form is an acceptable substitute for an official form of the Internal Revenue Service), and

(iv) The manner of furnishing a statement required under sections 6042(c),